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RE LAI YET CHUNG; EX P OCBC BANK (M) BHD & ANOTHER CASE

HIGH COURT MALAYA, IPOH
LEE SWEE SENG JC
B [BANKRUPTCIES NO: 29-1079-2011 & 29-1080-2011]
29 MARCH 2013

BANKRUPTCY: *Act of bankruptcy - Application to set aside bankruptcy notice, adjudicating order and receiving order - Whether notice*
C *to oppose petition defective - Whether notice to oppose needed to be followed by an application supported by affidavit - Whether affidavit opposing petition was rightfully rejected - Whether judgment debtor out of time to raise grounds to set aside creditor's petition - Bankruptcy Act 1967, s. 3(2)(ii)*

D ***BANKRUPTCY:*** *Act of bankruptcy - Judgment debt - Challenge of - Dispute as to debt - Whether judgment debtor filed notice within seven days after service of bankruptcy notice - Whether general challenge adequate - Whether affidavit in opposition bereft of notice of application could substitute notice to show cause against creditor's petition to challenge*
E *debt - Bankruptcy Act 1967, ss. 3(2)(ii) & 131*

The judgment debtors ('JD') were the guarantors of a joint and several guarantee which was given in favour of the judgment creditor ('JC') for a loan taken by A & A Trading Service Station
F Sdn Bhd. The JC filed a bankruptcy action against the JD on 15 August 2011 and the bankruptcy notice ('BN') was served on the JD on 9 May 2012 *via* substituted service. The JD then filed their appearance and the creditor's petition ('CP') was filed on 30 July 2012 and was served on the JD on 27 September 2012.
G On 2 October 2012, the Senior Assistant Registrar ('SAR') directed the JD to file the affidavit to oppose by 16 October 2012 and thereafter, for the JC to reply the said affidavit by 30 October 2012. The next mention date was fixed on 31 October for further directions. The JD failed to file the affidavit to oppose as directed
H and counsel for the JD failed to appear in court on the next mention date. On 31 October 2012, the SAR gave directions that the court would not entertain further affidavits filed by the JD after 31 October 2012. The case was subsequently adjourned to 7 November 2012. Both JDs filed and served their affidavit in
I opposition on 5 November 2012. On 7 November 2012, the SAR rejected the said affidavits and granted adjudicating order ('AO') and receiving order ('RO') against both JDs. Hence the appeal

against the decision of the SAR. Among the issues that arose, *inter alia*, were: (i) whether the JD's notice to oppose the petition was defective as the grounds of opposition to the petition were not specified; (ii) whether r. 117 of the Bankruptcy Rules 1969 ('the Bankruptcy Rules') required a Form 16 Notice to be followed up by an application supported by an affidavit; (iii) whether the affidavit to oppose the petition was rightly rejected by the SAR; and (iv) whether the grounds for setting aside the CP were without merit and that the JD was out of time in raising the grounds by virtue of s. 3(2)(ii) of the Bankruptcy Act 1967 ('the Bankruptcy Act'). A B C

Held (dismissing JDs' appeal with costs):

(1) The JD only stated that the debt was disputed in the CP. In this circumstance, the JD should have filed a notice within seven days after being served with the bankruptcy notice pursuant to s. 3(2)(ii) of the Bankruptcy Act. A general challenge by the JD that he was disputing the debt was inadequate. (para 10) D

(2) The JD's affidavit in opposition bereft of a notice of application could not be substituted as a notice to show cause against the CP to challenge the debt for which the JC was petitioning to make the JD a bankrupt. Such failure was not curable under s. 131 of the Bankruptcy Act and r. 274 of the Bankruptcy Rules. Consequently, if the curable provision under the Bankruptcy Act could not save the non-compliance, the saving provision under the Bankruptcy Rules would also be powerless. (paras 13 & 16) E F

(3) The filing of the affidavit by the JD after 31 October 2012 was a patent violation of r. 22 of the Bankruptcy Rules as well as the directions of the court. It was presumptuous of the JD to assume that the court would accept the affidavit which was filed out of time without applying for an extension of time. Even the JD's counsel was not present in court to explain the failure to file the affidavit. (para 19) G H

(4) The bankruptcy court could not go behind the judgment taken. The JD was out of time to dispute the validity of the BN and CP on the grounds of wrong sum claimed. Section 3(2)(ii) of the Bankruptcy Act provides that a bankruptcy notice shall not be invalidated by reason that the specified sum in the notice exceeded the amount actually due I

A unless the debtor had within the time allowed for payment gives notice to the creditor that the sum was disputed. The failure to give such notice would mean that the JD was deemed to have complied with the BN. (paras 30, 31 & 32)

B **Case(s) referred to:**
Captain Ho Fooi v. Standard Chartered Bank Malaysia Bhd [2009] 5 CLJ 501 CA ***(refd)***
Development & Commercial Bank Berhad v. Datuk Ong Kian Seng @ Ong Kin Cheang [1995] 3 CLJ 307 FC ***(refd)***
Lim Koon Chow v. AmBank (M) Bhd [2012] 4 CLJ 624 HC ***(refd)***
C *Sovereign General Insurance Sdn Bhd v. Koh Tian Bee [1988] 1 CLJ 155; [1988] 1 CLJ (Rep) 277 SC* ***(foll)***
Sunway PMI-Pile Construction Sdn Bhd v. Pembenaan Chan & Chua Sdn Bhd [2003] 5 CLJ 63 HC ***(refd)***
Zuraida Mat v. Emville Sdn Bhd [2008] 10 CLJ 705 HC ***(refd)***

D **Legislation referred to:**
Bankruptcy Act 1967, ss. 3(2)(ii), 131
Bankruptcy Rules 1969, rr. 22, 117, 274, 276
Rules of Court 2012, O. 1 r. 4, O. 34 rr. 1, 6, O. 94 r. 1(a)

E *For the appellants/judgment debtors - Hazlan Abdul Hamid; M/s Iszam Kamal & Hazlan*
For the respondent/judgment creditor - Gary Xavier; M/s Kean Chye & Sivalingam

Reported by Sandra Gabriel

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JUDGMENT

Lee Swee Seng JC:

G **[1]** The two appeals were heard together because the facts are similar and the two judgment debtors (JDs) are guarantors under a joint and several guarantee given in favour of the judgment creditor (JC) for a loan taken by A & A Trading Service Station Sdn Bhd. This is an appeal by the JDs against the decision of the H Senior Assistant Registrar (SAR) rejecting the affidavit to oppose affirmed by the JDs on 5 November 2012 and granting an adjudicating order and receiving order (AO and RO) against the JDs on 7 November 2012. As the facts for both appeals are I similar and the solicitors for both the JC and the JDs are the same sets of solicitors, to avoid unnecessary repetition this judgment shall only refer to the facts as are set out for the first JD, unless otherwise stated.

Problem

[2] The facts as narrated by learned counsel for the JC, Mr Gary Xavier, in his written submission are set out herein. The JC had filed a bankruptcy action against the JD on 15 August 2011. The BN was served on the JD on 9 May 2012 *vide* substituted service. Messrs Iszam Kamal & Hazlan entered an appearance for the JD on 9 May 2012. The creditor's petition (CP) was filed on 30 July 2012 and was served on 27 September 2012.

[3] On 2 October 2012 the SAR gave the following directions for the parties to comply:

(a) JD to file affidavit to oppose by 16 October 2012;

(b) JC to reply to the said affidavit by 30 October 2012;

(c) Mention on 31 October 2012 whereby the court will give further directions.

[4] The JD failed to file any affidavit to oppose as directed by the SAR. The counsel for the JD also failed to appear in court on 31 October 2012 for mention to clarify the matter. In the result the SAR on 31 October 2012 gave further directions as follows:

(a) that the court would not entertain any affidavits filed by the JD after 31 October 2012; and

(b) that the JC's counsel do inform the JD of the hearing date of the CP even though there were solicitors on record.

[5] The case was adjourned to 7 November 2012 for the JC to inform the JD of the bankruptcy proceedings.

[6] Both the JDs filed and served their affidavits to oppose after affirming it on 5 November 2012.

[7] The SAR on 7 November 2012 rejected the affidavit to oppose filed by the JD and granted an AO and RO against both the JDs. Against that order the JD had appealed to this court.

A **Principle**

Whether The JD's Notice To Oppose The Petition In Form 16 Is Defective In Not Specifying The Grounds Of Opposition To The Petition

B **[8]** The JD filed his notice of opposition to the petition which notice was dated 27 September 2012. Rule 117 of the Bankruptcy Rules 1969 ('the Bankruptcy Rules') requires the JD to specify in the said notice the portion of the CP which the JD intends to deny or dispute and must state the grounds of opposition to the CP. It reads:

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> **117. Debtor intending to show cause**
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> Where a debtor intends to show cause against a petition he shall file a notice with the Registrar specifying the statements in the petition which he intends to deny or dispute and transmit by post or otherwise to the petitioning creditor and his solicitor if known a copy of the notice three days before the day on which the petition is to be heard (Form 16).

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[9] The Court of Appeal in *Captain Ho Fooi v. Standard Chartered Bank Malaysia Bhd* [2009] 5 CLJ 501; [2009] 4 AMR 365 set out the scheme and scope of opposing a CP under r. 117 of the Bankruptcy Rules 1969 as follows:

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> [17] Rule 18(1) provides that every application to the court in a bankruptcy matter shall be made by summons in chambers supported by affidavit, save where otherwise provided by the Act or the Rules. The procedure for setting aside a bankruptcy notice is governed by rule 95(1) which only requires the applicant to file an affidavit in Form 7 stating either he has satisfied the judgment debt in question, or that he has a counterclaim or set-off in the sum equal to or exceeding the claim. At the creditor's petition stage, if the debtor intends to show cause against the petition he is required under rule 117 to file a notice in Form 16 to the registrar specifying the statements in the petition which he intends to deny or dispute and transmit a copy thereof to the creditor three days before the day on which the petition is to be heard.
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> [18] In *Dato' Sri Teong Teck Leng v. Jupiter Securities Sdn Bhd (supra)*, this court has expressed the view that the notice to oppose the petition under rule 117 is only applicable in cases

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where a debtor intends to show cause against the petition. In the said notice he has to specify the statement in the petition which he intends to deny or dispute.

[19] In *Datuk Lim Kheng Kim v. Malayan Banking Bhd* [1993] 2 AMR 1285; [1993] 2 MLJ 298, the appellant debtor filed an affidavit in opposition containing 19 paragraphs attacking the bankruptcy notice and raising several grounds why the creditor's petition should be dismissed. The court held that the said affidavit containing a multitude of grounds other than the existence of a counterclaim or set-off or cross-demand (being the ground for setting aside a bankruptcy notice) rendered his affidavit in opposition ineffective and bad in law. Similarly, by analogy, we are of the view that *the filing of the notice to oppose the petition herein for purposes other than "to deny or dispute" the statement in the petition will also render the said notice ineffective and bad in law*. In our view the fact in *Megat Najmuddin (supra)*, is easily distinguishable as it only relates to the irregularities in the filing of appeal record. (emphasis added)

[10] All that the JD stated in his notice to oppose the CP was that he is disputing the debt as stated in the CP. That is rather vague. Is he stating that he did not owe the JC any monies? If that be the case than he has to set aside the judgment taken against him by the JC. Is he stating that the sum stated as owing is more than what is actually owing? In that case he should be filing a notice within seven days of being served with the bankruptcy notice (BN) under s. 3(2)(ii) of the Bankruptcy Act 1967 ('the Bankruptcy Act'). A general challenge by the JD that he is disputing the debt is woefully inadequate. As was stated in *Sovereign General Insurance Sdn Bhd v. Koh Tian Bee* [1988] 1 CLJ 155; [1988] 1 CLJ (Rep) 277, the Supreme Court held at p. 281 as follows:

The respondent gave notice of intention to oppose petition but made no mention of any irregularity. It is fair to say that if one wants to challenge the validity of a bankruptcy notice one must give proper notice. We are unable, as the respondent urged us, to say that the bankruptcy notice is irregular and invalid and that the respondent has not committed an act of bankruptcy within the meaning of s. 3(1)(c) of the Bankruptcy Act 1967 entitling the petitioning creditors to petition herein.

Whether Under Rule 117 Of The Bankruptcy Rules 1969 A Form 16 Notice Must Be Followed Up With An Application Supported By An Affidavit

[11] The JD did not follow up the notice under Form 6 with an application supported by an affidavit. Rule 18 requires an application to be by way of a summons in chambers supported by an affidavit. It reads:

> **18. Applications to be made by summons in chambers**
> (Am PU(A) 60/93)
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> (1) Except where these Rules or the Act otherwise provide, every application to the Court shall, unless the Chief Justice otherwise directs, be made by summons in chambers supported by affidavit.

[12] This requirement has been highlighted in the Federal Court case of *Development & Commercial Bank Berhad v. Datuk Ong Kian Seng @ Ong Kin Cheang* [1995] 3 CLJ 307; [1995] 2 MLJ 724 at pp. 313 & 314 (CLJ); p. 731 (MLJ) as follows:

> Rule 117 provides that where a debtor intends to show cause against a petition, he shall file a notice specifying the statements in the petition which he intends to deny or dispute. The contents of the notice can be found in Form 16 of the Rules wherein it must be stated that he intends to oppose the making of the receiving order as prayed and that he intends either to dispute the petitioning creditor's debt or the act of bankruptcy or as the case may be. Rule 18 of the Rules further provides that except where the Rules or the Act provide, every application shall, unless the court otherwise directs, be made by motion supported by an affidavit. In *Datuk Lim Kheng Kim*, the Supreme Court held that failure to follow r. 18, which requires an application to be made by motion supported by affidavit, renders an affidavit in opposition ineffective and bad in law because unless the court otherwise directs, challenges to the creditor's petition or bankruptcy notice other than that the debtor has a counterclaim, set-off or cross-demand which equals or exceeds the judgment debt, must be made by filing a notice of motion supported by an affidavit. This court has no reason to disagree with the decision and will follow it. Accordingly, in our view, the respondent's affidavit in opposition cannot be substituted as a notice to show cause against the creditor's petition to challenge the validity of the bankruptcy notice.

[13] The JD's affidavit in opposition bereft of a notice of application cannot be substituted as a notice to show cause against a CP to challenge the debt for which the JC is petitioning to make the JD a bankrupt.

[14] The Federal Court had gone on to observe that such a failure is not curable under s. 131 of the Bankruptcy Act and under r. 274 of the Bankruptcy Rules. Section 131 of the Bankruptcy Act reads:

> **131. Formal defect not to invalidate proceedings**
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> No proceeding in bankruptcy shall be invalidated by any formal defect or by any irregularity, unless the court before which an objection is made to the proceeding is of opinion that substantial injustice has been caused by the defect or irregularity and that the injustice cannot be remedied by any order of that court.

[15] The Federal Court hastened to add at p. 314 (CLJ) that:

> ... no breach of a mandatory rule can be described as a formal defect or an irregularity that can be cured. (*Au-Yong v. Dicum & Anor* [1963] MLJ 349, CA at p 354).

[16] Consequently if the curable provision under the Bankruptcy Act cannot save the non-compliance, the saving provision under the Bankruptcy Rules would be powerless too. Rule 274 is set out below:

> **274. Effect of non-compliance with Rules**
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> Non-compliance with any of these Rules or with any rule of practice for the time being in force shall not render any proceeding void unless the Court shall so direct but such proceeding may be set aside either wholly or in part as irregular or amended or otherwise dealt with in such manner and upon such terms as the Court may think fit.

Whether The Affidavit To Oppose The Petition Was Rightly Rejected By The SAR

[17] The said affifavit of the JD was filed on 5 November 2012 and the hearing of the CP was fixed on 7 November 2012. Rule 22 of the Bankruptcy Rules 1969 provides as follows:

> **22. Affidavits in opposition**
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> Where any party intends to use affidavits in opposition to an application he shall deliver copies of them to every party affected thereby **not less than three clear days before the day appointed for the hearing**. (emphasis added)

[18] More than that the SAR had during case management on 2 October 2012 given the direction that the JD is to file affidavit to oppose petition by 16 October 2012. That was not done. On the next case management date on 31 October 2012, the SAR stated that the court would not accept any affidavits filed after 31 October 2012. The matter was then adjourned to 7 November 2012.

[19] The filing of the affidavit of the JD was both in patent violation of r. 22 as well as the directions of the court. It was also presumptuous of the JD to assume that the court would accept the affidavit filed way out of time without applying for extension of time from the court setting out the reasons for the violation or at least get the consent of the JC's solicitors to the extension of time. The JD's own counsel was not present in court on 31 October 2012 to explain the failure to file the affidavit.

[20] A "proceeding" is defined under O. 1 r. 4 of the Rules of Court 2012 as follows:

> "proceeding" means any proceeding whether in open Court or in Chambers and includes an application at any stage of a proceeding which is deemed to have started when an action is filed;

[21] If there is any doubt as to whether the provisions of the Rules of Court 2012 are applicable to case management before the SAR in bankruptcy proceedings, one can fall back on r. 276 of the Bankruptcy Rules 1969. It states as follows:

> **276. Rules of the High Court applicable in event of *lacunae***
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> In the absence of any rule regulating any proceeding under the Act or these Rules, the Rules of the High Court shall apply, *mutatis mutandi*s [Am PU(A) 60/93].

[22] As the Rules of the High Court 1980 had been repealed by O. 94 r. 1(a) of the Rules of Court 2012, reference shall now be made to the Rules of Court 2012.

[23] Order 34 r. 1 of the Rules of Court 2012 provides as follows:

> **1. Orders and directions for just, expeditious and economical disposal of proceedings (O. 34 r. 1)**
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> (1) Notwithstanding anything in these Rules, the Court may, at any time after the commencement of proceedings, of its own motion, direct any party or parties to the

proceedings to appear before the Court, in order that the Court may make such order or give such direction as it thinks fit so that:

(a) all matters which must or can be dealt with on interlocutory applications and have not already been dealt with may so far as possible be dealt with; and

(b) such directions may be given as to the future course of the action as appear best adapted to secure the just, expeditious and economical disposal thereof.

(2) Where the Court makes orders or gives directions under paragraph (1), the Court may take into account whether or not a party has complied with any relevant pre-action protocol or practice direction for the time being issued.

(3) **Where any party fails to comply with any order made or direction given by the Court** under paragraph (1), the Court may dismiss the action, strike out the defence or counterclaim or **make such other order as it thinks fit**. (emphasis added)

[24] As was stated on the next case management date on 31 October 2012, the SAR stated that the court would not accept any affidavits filed after 31 October 2012. The matter was then adjourned to 7 November 2012.

[25] Order 34 r. 6 of the Rules of Court 2012 reads:

6. Failure to attend (O. 34 r. 6)

(1) If, at the time appointed for the pre-trial case management, any party fails to attend, the Court may dismiss the action or proceedings or strike out the defence or counterclaim or enter judgment or **make such other order as the Court thinks fit**. (emphasis added)

[26] As was stated learned counsel for the JD was absent on the case management on 31 October 2012.

[27] The seriousness with which the court has approached the fact of non-compliance with the court's directions is captured in the case of *Sunway PMI-Pile Construction Sdn Bhd v. Pembenaan*

Chan & Chua Sdn Bhd [2003] 5 CLJ 63 and also in *Zuraida Mat v. Emville Sdn Bhd* [2008] 10 CLJ 705 where His Lordship Hishamudin Mohd Yunus J (as he then was) observed at p. 708 as follows:

> [11] In this case, the plaintiff has only one witness to call, namely, the plaintiff herself (I refer to the plaintiff's list of witness at encl. 31), meaning that there is only one witness statement to prepare and to serve. Initially the plaintiff was given two months to prepare and to serve the witness statement on the defendant (it is important to bear in mind that the defendant would not be in a position to prepare and to serve their witness statements unless and until the plaintiff serve her witness statement on the defence). Then, on the plaintiff's application by letter, the period was extended by one month. The reason given by the plaintiff's solicitor when seeking the one-month extension was not a good one (the reason given was only that the parties were trying to settle), but nonetheless I was generous and I granted the one-month extension. It is beyond imagination that a witness statement for just one witness could not be completed within the three-month period. *Litigants cannot take the court for granted all the time. Indeed, they must never at all take the court for granted. And when a litigant has the temerity to take the court for granted, he (or she) does it at his (or her) own peril.* (emphasis added)

Whether The Grounds For Setting Aside The CP Are Unmeritorious And In Any Event The JD Is Out Of Time To Raise It Under s. 3(2)(ii) Of The Bankruptcy Act 1967

[28] Section 3(2)(ii) of the Bankruptcy Act 1967 provides:

> (2) A bankruptcy notice under this Act shall be in the prescribed form and shall state the consequences of non compliance therewith and shall be served in the prescribed manner:
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> Provided that a bankruptcy notice:
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> (i) may specify an agent to act on behalf of the creditor in respect of any payment or other thing required by the notice to be made to or done to the satisfaction of the creditor; and
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> (ii) *shall not be invalidated by reason only that the sum specified in the notice as the amount due exceeds the amount actually due unless the debtor within the time allowed for payment gives*

> *notice to the creditor that he disputes the validity of the notice on the ground of such mistake*; but if the debtor does not give such notice he shall be deemed to have complied with the bankruptcy notice, if within the time allowed he takes such steps as would have constituted compliance with the notice had the actual amount due been correctly specified therein. (emphasis added)

[29] The grounds for setting aside the CP as stated by the JD in his affidavit can be summarised as follows:

(a) The JC has failed to take into consideration the sum of RM300,000 pledged as security for the loan;

(b) The JC has failed to show that the amounts realised from the auction are the only amounts that could be realised;

(c) There has been error in the calculation of interests in the amount stated in the bankruptcy notice;

(d) That the JD has filed an application to the Federal Court for review of its decision in refusing leave to appeal to the Federal Court after it has affirmed the decision of the Court of Appeal in Civil Appeal No. A-02(IM)-869-2010 and the High Court of Ipoh (Suit No. 22-203-2008) in striking out the action commenced by both the JDs against the JC.

[30] It must be noted that the bankruptcy notice had been based on a summary judgment taken against the JDs and they had been unsuccessful in their appeals against the judgment taken. The bankruptcy court cannot go behind the judgment taken. At any rate the application for review by the Federal Court had been dismissed. What the JDs had tried to do was to impugn the judgment of the court but their attempts had been a dismal failure. They now want the court to go behind the final judgment of the court. The answer is found in a similar application made by the JD in *Sovereign General Insurance Sdn Bhd v. Koh Tian Bee* [1988] 1 CLJ 155; [1988] 1 CLJ (Rep) 277 at p. 279 where the Supreme Court had stated with both alacrity and authority as follows:

> In the exercise of his jurisdiction in bankruptcy proceedings the learned Judge cannot go behind the judgment. Thus on an application to set aside a bankruptcy notice it was laid down as early as 1893 that the Court could not go behind the judgment.

A See *In re Easton* [1893] 10 Mor 111. Even if there has been an irregularity in the service of the notice of sale it is not open to the respondent in this case to challenge the execution proceedings. Under s. 3(1)(i) of the Bankruptcy Act 1967 a debtor commits an act of bankruptcy if a creditor has obtained a final judgment for any amount and has served on him a bankruptcy notice requiring him to pay the judgment debt or sum ordered to be paid in accordance with the terms of the judgment. *He has seven days after service of the notice to comply with the requirements of the notice or satisfy the Court that he has a counterclaim, set off or cross demand which equals or exceed the amount of the judgment debt or sum ordered to be paid and which he could not set up in the action in which the judgment was obtained or in the proceedings in which the order was obtained.* Having regard to these provisions it was wrong for the learned Judge to strike out the creditor's petition. (emphasis added)

D **[31]** With respect to the objection taken that the sum claimed in the BN and CP is wrong, the JD is clearly out of time to dispute the validity of the BN and consequently the CP that had proceeded based on it. Section 3(2)(ii) of the Bankruptcy Act provides clearly that a bankruptcy notice "(ii) shall not be E invalidated by reason only that the sum specified in the notice as the amount due exceeds the amount actually due unless the debtor within the time allowed for payment gives notice to the creditor that he disputes the validity of the notice on the ground of such mistake; ...". As I stated in *Lim Koon Chow v. AmBank* F *(M) Bhd* [2012] 4 CLJ 624 at p. 646:

Furthermore such a challenge must be made within the seven days allowed for the JD to make payments and as the challenge was not so made, this application at a late stage after the issuance G of the CP to now challenge the sum that is required to be paid to avoid an act of bankruptcy is made too late in the day. At any rate the JD had not said that at all material time he was prepared to pay the lesser figure based on his correct calculation but that the JC had unreasonably refused to accept.

H **[32]** The failure to give such a notice would mean that the JD "... shall be deemed to have complied with the bankruptcy notice, if within the time allowed he takes such steps as would have constituted compliance with the notice had the actual amount due been correctly specified therein," as provided further in s. 3(2)(ii)

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of the Bankruptcy Act. As that also had not been done, it is lamentably too late in the day for the JD to launch such a challenge when the time to do so has long passed!

Pronouncement

[33] I am more than satisfied that there are no merits whatsoever in these two appeals. In the circumstance, the appeals are dismissed with costs of RM2,000 for each appeal.